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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: LOS ANGELES DISTRICT OFFICE Date: JAN [illegible] 2006

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Los Angeles. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico. The applicant was found inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I). The applicant indicates that she is the spouse of a U.S. citizen and mother of a U.S citizen child. She seeks a waiver of inadmissibility to remain in the United States with her family and adjust her status to that of a lawful permanent resident pursuant to INA § 245, 8 U.S.C. § 1255, as the beneficiary of an immediate relative petition filed on her behalf by her husband.

The district director found that the applicant failed to establish extreme hardship to her U.S. citizen spouse and denied the application accordingly.

On appeal, counsel contends that the district director improperly failed to consider hardship to the applicant's U.S. citizen child and failed to consider in the aggregate all the hardship factors present in the case. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, in pertinent part:

> (i) In general.—Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the elements of—
>
> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, . . . is inadmissible.
>
> (ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if—
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> > (I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correction institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or
> >
> > (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of six months (regardless of the extent to which the sentence was ultimately executed).

8 U.S.C. § 1182(a)(2)(A). The district director based the finding of inadmissibility under this section on the applicant's conviction for a petty theft committed on or about May 12, 2001.[1] The applicant does not contest the district director's determination of inadmissibility. The question on appeal is whether the applicant qualifies for a waiver of inadmissibility. Section 212(h) of the Act provides, in pertinent part:

> The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . if—
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> (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that—
>
> (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
>
> (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
>
> (iii) the alien has been rehabilitated; or
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> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien;
>
> . . . and
>
> (2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status. . .

8 U.S.C. § 1182(h). As less than 15 years have elapsed since the activities for which the applicant was determined inadmissible occurred, she is statutorily ineligible for consideration of a waiver under

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[1] The AAO notes that the district director previously granted to the applicant a waiver of inadmissibility for an inadmissibility finding under the same statute based on the applicant's two prior convictions for crimes involving moral turpitude, in 1990 and 1998. "A waiver granted under section 212(h) . . . of the Act shall apply only to those grounds of excludability and to those crimes, events or incidents specified in the application for waiver." 8 C.F.R. § 212.7(a)(4). When the additional conviction was discovered, the district director properly required the applicant to file a new application for waiver of inadmissibility based on the subsequent offense.

section 212(h)(1)(A). A section 212(h)(1)(B) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, or child of the applicant. Hardship to the alien herself is not a permissible consideration under the statute. The applicant's spouse and child are U.S. citizens, and the only qualifying relatives for whose benefit the waiver of inadmissibility may be granted.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez,* the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has also held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in the applicant's favor. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant's spouse ([redacted] a 45-year-old naturalized U.S. citizen born in Bolivia. He immigrated to the United States in 1984. He and the applicant met in 1989 and married in 1996 in California. He naturalized in 1997. He and the applicant have an 8-year-old U.S. citizen daughter, born in California. [redacted]has worked as a supervisor, quality controller, and operator at various electronics manufacturing firms. He has a ninth grade education and 15 years of experience as an electronic technician. The applicant is a homemaker and has a sixth grade education. Her parents, born in Mexico, are deceased.

The most recent financial documentation on file is for 1997 and shows that [redacted] provided 100% of the household income of $34,955, and claimed his daughter and mother as dependents. He claimed that his mother resided with the couple for the entire year. In a statement on appeal, he notes that his parents both live in Bolivia. He also states that he has been unemployed for one month due to the closure of the last plant where he worked and that the only household income is from the applicant. *Declaration of Lino Freddy Parra* (September 29, 2003). Although [redacted] statement alleges financial difficulties due to his unemployment, there is no documentation of the couple's current financial condition other than a copy of what appears to be one monthly mortgage statement. There is no assessment of [redacted] future employability given his past extensive work experience on the record. In his written statement, [redacted] stresses the emotional strain of separation and calls country conditions in Mexico "an abomination . . . under primitive conditions." *Statement of Lino Parra* (November 11, 2002). The record has not been updated during the pendency of the appeal to show the couple's current financial or other circumstances.

In support of her first request for waiver, the applicant emphasized in her written statement that, if she were refused admission, bringing her daughter to Mexico would deprive her of the quality of life she could attain in the United States and leaving her daughter and husband alone in the United States would be "chaotic to say the least." *Statement of Maria Guadalupe Hernandez de Parra* (November 30, 2000). In support of the present waiver application, the applicant submits a statement from a marriage and family therapist. The therapist indicates that the applicant is under tremendous stress and her run-ins with the law have been a "cry for help." *Letter of George Fleming, MS, MFT* (December 16, 2002).

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse or child face extreme hardship if the applicant is refused admission. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a family member is removed from the United States. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). While the Ninth Circuit places particular emphasis on consideration of the impact of separation of the family, the waiver is nevertheless not to be granted in every case where possible separation is at issue. The record in this case does not demonstrate extreme hardship if the applicant's spouse and child relocated to Mexico to avoid separation. Inability to pursue one's chosen career or reduction in standard of living does not necessarily result in extreme hardship. *See Ramirez-Durazo v. INS,* 794 F.2d 491, 499 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.");

Shooshtary v. INS, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.") [redacted] past employment history shows that he has consistently made a good living in the United States; there is no evidence that his unemployment will be permanent, particularly given his experience and skills. There is also no evidence to show that his experience and skills would not enhance his employability in Mexico. The applicant's spouse faces, as all spouses facing deportation or refusal of admission of a spouse, the decision of whether to remain in the United States or relocate to avoid separation. The BIA has held, "[t]he mere election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *See Matter of Mansour,* 11 I&N Dec. 306, 307 (BIA 1965). In this case, the record does not contain sufficient evidence to show that the particular hardship faced by the qualifying relatives rises beyond common difficulties of separation or relocation to the level of extreme. *See Ramirez-Durazo, supra.*

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse and/or child as required under INA § 212(h), 8 U.S.C. § 1186(h).

In proceedings for application for waiver of grounds of inadmissibility under section 212 of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.